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April 15, 2010

VIA ELECTRONIC FILING

Clerk, United States District Court
William T. Walsh, Clerk
District Court of New Jersey
M.L. King, Jr. Federal Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102


Re: **Prystowsky, et al v. TGC Stores, Inc., et al**
Docket No.: 2:07 c.v. 0072 (SDW) (MCA)

Dear Sir/Madam:

Our firm represents Fourth Party Defendant, Carling Technologies, Inc., in the above matter. Enclosed for filing is the Answer to the Complaint and Case Information Statement.

Please confirm that this Answer has been filed on behalf of the Fourth Party Defendant, Carling Technologies, Inc.

Very truly yours,
DALY, LAMASTRA & CUNNINGHAM



William P. Cunningham

WPC:mpd
Encls.

April 15, 2010

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cc: Deborah A. Crinigan, Esq.
Charles Eblen, Esq.
Neil L. Sambursky, Esq.
Matthew S. Schorr, Esq.
Robert M. Kaplan, Esq.
Charles L. Simmons, Jr., Esq.

DALY, LAMASTRA & CUNNINGHAM
3 Mountain View Road
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Warren, NJ 07061(908) 903-5700
Attorneys for Fourth Party Defendant
Carling Technologies, Inc.

DR. MILTON PRYSTOWSKI, in his own right
and as Executor of the Estate of Rose
Prystowsky,

Plaintiff,

v.

TGC STORES, INC.; ADT SECURITY
SERVICES, INC.; INVACARE
CORPORATION; GOLDEN BROTHERS, INC.
d/b/a GOLDEN TECHNOLOGIES; PRIDE
MOBILITY PRODUCTS CORP.,

Defendants,

And

PRIDE MOBILITY PRODUCTS CORP.,

Defendant/Third Party Plaintiff,

v.

DEWERT MOTORIZED SYSTEMS;
PHOENIX MECANO, INC. and KINGSTEC
INDUSTRIES, INC,

Third Party Defendants,

And

KINGSTEC INDUSTRIES, INC.,

Third Party Def/Fourth Party Plaintiff,

v.

CARLING INDUSTRIES, INC., and JOHN
DOES 1-10,

Fourth Party Defendant.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY - NEWARK
DOCKET NO.: 2:07 c.v. 0072 (SDW) (MCA)

CIVIL ACTION

**ANSWER TO COMPLAINT AND
DESIGNATION OF TRIAL COUNSEL**

Fourth Party Defendant, Carling Technologies, Inc., by way of Answer to the Fourth Party Complaint, says:

ANSWER TO PARTIES COUNT

1. The allegations set forth in Paragraphs 1, 2 and 3 of the Parties Count do not relate to this fourth party defendant and said fourth party defendant makes no answer hereto. If any of the allegations are deemed to relate to this fourth party defendant, said allegations are denied.

2. This fourth party defendant denies the allegations contained in Paragraph 4 of the Parties Count.

3. Fourth Party Defendant admits the allegations contained in Paragraph 5 (misabeled as a second "4") of the Parties Count.

4. The allegations set forth in Paragraphs 6 (misabeled as "5") and 7 (misabeled as "6") of the Parties Count do not relate to this fourth party defendant and said fourth party defendant makes no answer hereto. If any of the allegations are deemed to relate to this fourth party defendant, said allegations are denied.

ANSWER TO JURISDICTION COUNT

1. This fourth party defendant repeats and reiterates its answers to all the allegations contained in all previous Counts as if fully set forth at length herein.

2. This fourth party defendant denies the allegations contained in Paragraphs 7, 8, 9, 10, 11, 12, 13 and 14 of the Jurisdiction Count.

ANSWER TO UNDERLYING ACTION COUNT

1. This fourth party defendant repeats and reiterates its answers to all the allegations contained in all previous Counts as if fully set forth at length herein.

2. Fourth Party Defendant admits the allegations contained in Paragraphs 15, 16, 17, 18, 19, 20, 21 and 22 of the Underlying Action Count.

3. This fourth party defendant denies the allegations contained in Paragraphs 23, 24 and 25 of the Underlying Action Count.

4. Fourth Party Defendant admits the allegations contained in Paragraph 26 of the Underlying Action Count.

5. The allegations set forth in Paragraphs 27 of the Underlying Action Count do not relate to this fourth party defendant and said fourth party defendant makes no answer hereto. If any of the allegations are deemed to relate to this fourth party defendant, said allegations are denied.

ANSWER TO FIRST COUNT

1. This fourth party defendant repeats and reiterates its answers to all the allegations contained in all previous Counts as if fully set forth at length herein.

2. This fourth party defendant denies the allegations contained in Paragraphs 29 and 30 of the First Count.

ANSWER TO SECOND COUNT

1. This fourth party defendant repeats and reiterates its answers to all the allegations contained in all previous Counts as if fully set forth at length herein.

2. This fourth party defendant denies the allegations contained in Paragraphs 32 and 33 of the Second Count.

FIRST AFFIRMATIVE DEFENSE

Damages, if any, sustained by the plaintiffs were the result of the sole negligence of the plaintiffs.

SECOND AFFIRMATIVE DEFENSE

The damages of the plaintiffs, third party plaintiff and fourth party plaintiff, if any, are statutorily limited by the percentage of comparative negligence and, in the event this fourth party defendant is determined to have been negligent, plaintiffs', third party plaintiff's and fourth party plaintiff's recovery is barred or limited as provided by N.J.S.A. 2A:15-5.1, et seq.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs', third party plaintiff's and fourth party plaintiff's Complaints are barred by the Doctrine of Equitable Estoppel.

FOURTH AFFIRMATIVE DEFENSE

Fourth Party plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs failed to mitigate their damages.

SIXTH AFFIRMATIVE DEFENSE

Any and all injuries and damages sustained by the plaintiffs were the proximate result of the negligent acts of third persons, natural and corporate, over whom this fourth party defendant exercised no control and for whose actions this fourth party defendant is not legally responsible.

SEVENTH AFFIRMATIVE DEFENSE

The Court lacks jurisdiction over the person of this fourth party defendant.

EIGHTH AFFIRMATIVE DEFENSE

This fourth party defendant owed no duty to plaintiffs or third party plaintiff or fourth party plaintiff at the time of the accident alleged in the Complaint and, if any duty was owed, such duty was not breached.

NINTH AFFIRMATIVE DEFENSE

This fourth party defendant was not guilty of any negligence or other wrongdoing contributing to the happening of the accident alleged in plaintiffs' Complaint.

TENTH AFFIRMATIVE DEFENSE

The product or instrumentality allegedly involved in plaintiffs' accident, having been completely under the control of persons other than this fourth party defendant, this fourth party defendant denies that it had any knowledge of any allegedly defective condition, or opportunity to correct same if, in fact, it did exist.

ELEVENTH AFFIRMATIVE DEFENSE

This fourth party defendant specifically denies that it designed, manufactured, or was in any way involved with the product referred to in plaintiffs' Complaint or Third Party Complaint or Fourth Party Complaint any of such product's component parts.

TWELFTH AFFIRMATIVE DEFENSE

The incident and injuries complained of were caused by the unauthorized, unintended or improper use of the product complained of as the result of plaintiffs' failure to exercise reasonable and ordinary care and caution.

THIRTEENTH AFFIRMATIVE DEFENSE

This fourth party defendant owed no duty by way of warranty, strict liability or tort to the plaintiffs or third party plaintiff or fourth party plaintiff.

FOURTEENTH AFFIRMATIVE DEFENSE

While denying the existence and/or breach of any warranties, this fourth party defendant asserts that, in the event that any such warranties did exist, the plaintiffs, third party plaintiff and fourth party plaintiff did not rely upon same.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint, Third Party Complaint and Fourth Party Complaint are governed by the provisions in the Product Liability Act, N.J.S.A. 2A:58C-1 et seq., and this fourth party defendant asserts all of the defenses available to it as set forth in said Act.

ANSWER TO CROSSCLAIMS

This fourth party defendant denies each and every allegation of any and all Crossclaims which have been or may be asserted against this fourth party defendant.

WHEREFORE, said fourth party defendant demands judgment dismissing any and all Crossclaims, with counsel fees and costs.

DESIGNATION OF TRIAL COUNSEL


Fourth Party Defendant, Carling Technologies, Inc., designates William P. Cunningham as trial counsel.

CERTIFICATION

I certify that the foregoing Answer to the Fourth Party Complaint was served within the time allowed under Rule 4:6-1.

Upon information and belief, the matter in controversy is not the subject of any other action pending in any Court nor the subject of a pending arbitration proceeding.

DALY, LAMASTRA & CUNNINGHAM
Attorneys for Fourth Party Defendant
Carling Technologies, Inc.



William P. Cunningham

DATED: April 15, 2010

CERTIFICATION OF MAILING

Marylu P. DiBisceglie, of full age certifies that:

(1) I am a secretary in the office of Daly, Lamastra & Cunningham, attorneys for Fourth Party Defendant, Carling Technologies, Inc. in this action.

(2) On April 7, 2010, I caused to be served via Electronic Filing, the within Answer to the Fourth Party Complaint, an original of which was filed with the Clerk of United States District Court, and a copy addressed to:

Deborah A. Crinigan, Esq.
White & Williams, LLP
1800 One Liberty Place
Philadelphia, PA 19103-7395
Attorneys for Plaintiffs

Charles Eblen, Esq.
Shook, Hardy & Bacon, Esqs.
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Attorneys for Defendant, ADT Security Services, Inc.

Neil L. Sambursky, Esq.
Miranda, Sambursky, Slone, Sklarin, Verveniotes, LLP
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Mineola, New York 11501
Attorneys for Defendant/Third Party Plaintiff, Pride Mobility Products Corp.

Matthew S. Schorr, Esq.
Marshall, Dennehey, Warner, Coleman & Goggin
425 Eagle Rock Avenue
Suite 302
Roseland, New Jersey 07068
Attorneys for Third Party Defendants, Phoenix Mecano, Inc. and Dewert Motorized Systems

Robert M. Kaplan, Esq.
Margolis Edelstein
100 Century Parkway
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Mt. Laurel, New Jersey 08054
Attorneys for Third Party Defendant/Fourth Party Plain, Kingstec Industries, Inc.

Charles L. Simmons, Jr., Esq.

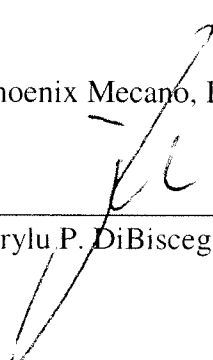
Gorman & Williams, P.C.

Two North Charles Street

Suite 750

Baltimore, Maryland 21201

Attorneys for Third Party Defendants, Phoenix Mecano, Inc. and Dewert Motorized Systems



Marylu P. DiBisceglie

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference or the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DR. MILTON PRYSTOWSKI, in his own right and as Executor of the Estate of Rose Prystowsky.

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, And Telephone Number)

DALY, LAMASTRA & CUNNINGHAM
3 Mountain View Road
P O Box 1622
Warren, NJ 07061
(908) 903-5700

DEFENDANTS

TGC STORES, INC.; ADT SECURITY SERVICES, INC.; INVACARE CORPORATION; GOLDEN BROTHERS, INC. d/b/a GOLDEN TECHNOLOGIES; PRIDE MOBILITY PRODUCTS CORP.,

County of Residence of the First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

William P. Cunningham, Esq. for Carling Technologies, Inc.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
X 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	1	1	Incorporated <i>or</i> Principal Place of Business in This State	4	4
Citizen of Another State	2	2	Incorporated <i>and</i> Principal Place of Business in Another State	5	5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury PERSONAL PROPERTY 362 Personal Injury-- Med Malpractice X 365 Personal Injury-- Product Liability 368 Asbestos Personal Injury Product Liability 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC 881 630 Liquor Laws 640 R.R. & Truck 650 Airline Regs 660 Occupational Safety/Health 690 Other	422 Appeal 28 USC 158 423 Withdrawal 28 USC 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 840 Trademark SOCIAL SECURITY 861 HIA (1395H) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS - Third Party 26 USC 7609	400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 810 Selective Service 850 Securities/Commodities/Exchange 875 Customer Challenge 12 USC 3410 890 Other Statutory Actions 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 440 Other Civil Rights	510 Motions to Vacate Sentence Habeas Corpus: 530 General 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding	2 Removed from State Court	3 Remanded from Appellate Court	4 Reinstated or Reopened	5 Transferred from another district (specify)	6 Multidistrict Litigation	7 Appeal to District Judge from Magistrate Judgment
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VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A UNDER F.R.C.P. 23

CLASS ACTION

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE

DOCKET NUMBER

DATE
April 14, 2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____